IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1960

No.

KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION, Petitioner

vs.

MOLONEY ELECTRIC COMPANY, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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BROWN, ARDERY, TODD & DUDLEY

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KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION, - - - - - - *Petitioner,*

v.

MOLONEY ELECTRIC COMPANY, - - - *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Petitioners pray that a Writ of Certiorari issue so that this Court may review the judgment entered on September 14, 1960 in this case by the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW.

The opinion in this case of the United States District Court for the Western District of Kentucky is reported at 175 F. Supp. 250 (W. D. Ky. 1959) and may be found as Appendix A to this Petition.

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 282 F. 2d 481 (6th Cir. 1960) and may be found as Appendix B to this Petition.

JURISDICTION.

The judgment of the Court of Appeals for the Sixth Circuit was entered on the 14th day of September, 1960 and became final on the 3rd day of October, 1960. The jurisdiction of the Court is invoked under the Act of June 25, 1948, c. 646, 62 Stat. 928, 28 U. S. C. § 1254 (1) (1952).

QUESTIONS PRESENTED.

1. Whether a rural electric cooperative which operates as a distributor of transformers for an electrical equipment manufacturer and performs all of the functions of a distributor, such as sales promotion, warehousing, servicing, etc., may receive a commission for services rendered by the cooperative to the manufacturer in connection with the purchase of transformers from the manufacturer by the cooperative's members, without being in violation of § 2(c) of the Clayton Act.

2. Does § 4 of the Robinson-Patman Price Discrimination Act keep a true cooperative from infringing 2(c) where the action of the cooperative does not tend to lessen competition, restrain trade or create monopoly?

STATUTES INVOLVED.

1. Kentucky Revised Statutes, § 279.020:

"Any five or more natural persons, a majority of whom are citizens of Kentucky, may, by executing, filing and recording articles of incorporation as provided in KRS 279.030 and 279.040, form a nonprofit cooperative corporation for either of the following purposes:

(1) To promote and encourage the fullest possible use of electric energy in this state by making electric energy available by production, transmission, distribution or otherwise to persons in rural areas of the state at the lowest cost consistent with sound business methods and prudent management, and by making available to such person, at the lowest cost consistent with sound business methods and prudent management, electrical devices, equipment, wiring, appliances, fixtures and supplies, and all kinds of tools, equipment and machinery operated by electric energy.

(2) *To promote* and encourage the fullest possible use of electric energy in this state *by making* electric energy *available* to persons in rural areas of the state at the lowest cost consistent with sound business methods and prudent management by producing, transmitting, distributing or furnishing electric energy *to any corporation formed under this chapter* for the purposes provided by subsection (1) of this section and only to such corporation, and by making available to such corporations and only to such corporations, *electrical devices,* equipment, wiring, appliances, fixtures and

supplies, and all kinds of tools, equipment and machinery operated by electric energy, *and* accounting services, forms and supplies, bargaining services, business counsel and advice, engineering services, supervisory services, investment counsel, *general purchasing services of all kinds,* and any other services that are requested or deemed advisable or desirable in the conduct of its business by any corporation formed under this chapter for the purposes stated in subsection (1) of this section. Any corporation organized under this chapter may be organized to do any or all of the acts set forth in this subsection." (emphasis added).

2. Section 2(a) of the Clayton Act as amended by § 1(a) of the Robinson-Patman Price Discrimination Act, 38 Stat. 730, (1914), as amended, 49 Stat. 1526 (1936), 15 U. S. C. § 13(a) (1952):

"It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who

either grants or knowingly receives the benefit of such discrimination, or with customers of either of them . . ."

3. Section 2(c) of the Clayton Act as amended by § 1(c) of the Robinson-Patman Price Discrimination Act, 38 Stat. 730 (1914), as amended, 49 Stat. 1526 (1936), 15 U. S. C. § 13(c) (1952):

> "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid."

4. Section 4 of the Robinson-Patman Price Discrimination Act, 49 Stat. 1528 (1936), 15 U. S. C. § 13b (1952):

> "Nothing in sections 13-13b, and 21a of this title shall prevent a cooperative association from returning to its members, producers, or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association."